

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ANTHONY WAYNE JOHNSON, JR.,

Plaintiff,

v.

M. GAINS *et al.*,

Defendants.

Civil No. 09cv1312-LAB (POR)

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR LEAVE TO FILE  
FOURTH AMENDED COMPLAINT**

**[ECF No. 52]**

On February 10, 2010, Plaintiff Anthony Wayne Johnson, Jr., a state prisoner proceeding *pro se* and *in forma pauperis*, filed a Third Amended Complaint pursuant to 42 U.S.C. § 1983 against ten California Department of Corrections and Rehabilitation officials.<sup>1</sup> (ECF No. 23.) On June 3, 2010, Defendants filed a Motion to Dismiss Plaintiff's Third Amended Complaint. (ECF No. 40.) While Defendants' motion was pending, Plaintiff filed a Motion for Leave to File a Fourth Amended Complaint.<sup>2</sup> (ECF No. 52.) Defendants have not opposed Plaintiff's motion.

On January 26, 2011, this Court issued a Report and Recommendation that Defendants' Motion to Dismiss be granted in part and denied in part. (ECF No. 50.) Specifically, the Court

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<sup>1</sup> On June 8, 2009, Plaintiff filed a complaint pursuant to 42 U.S.C. § 1983. (Doc. 1.) On August 19, 2009, the Honorable Larry A. Burns dismissed Plaintiff's Complaint without prejudice for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2)(b) and 1915A(b). (Doc. 4.) Plaintiff filed his First Amended Complaint on September 11, 2009. (Doc. 8.) On October 8, 2009, the Court dismissed Plaintiff's First Amended Complaint without prejudice for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2)(b) and 1915A(b). (Doc. 11.) On October 28, 2009, Plaintiff filed his Second Amended Complaint. (Doc. 14.) Again, on November 9, 2009, the Court dismissed Plaintiff's Second Amended Complaint for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2)(b) and 1915A(b). (Doc. 15.)

<sup>2</sup> Plaintiff submitted a proposed Fourth Amended Complaint as an exhibit to his motion. (ECF No. 52, Ex. 1.)

recommended granting the following claims without prejudice: (1) Plaintiff's Eighth Amendment excessive force claims against Defendants Gains, Holmstrom and Beltran; (2) Plaintiff's claims against Defendant Cate; and (3) Plaintiff's request for injunctive relief. (*Id.* at 12.) On February 24, 2011, the Honorable Larry A. Burns issued an order adopting this Court's recommendation to grant in part and deny in part Defendants' Motion to Dismiss. (ECF No. 53.)

Leave to amend should be freely given "when justice so requires." Fed.R.Civ.P. 15(a)(2). Furthermore, "[t]his policy is applied even more liberally to pro se litigants." *Eldridge v. Block*, 832 F.2d 1132, 1135 (9th Cir. 1987). Here, Plaintiff requests to amend his complaint only to include "more details and evidence to support his claims." (ECF No. 52 at 1.) Based on a review of the proposed Fourth Amended Complaint, and for the reasons set forth in this Court's previous Report and Recommendation Order, the Court hereby **GRANTS** Plaintiff's Motion to Amend.

Accordingly, IT IS HEREBY ORDERED:

1. The Clerk of Court shall file Plaintiff's Fourth Amended Complaint (Doc. 52-1) as a new entry on the docket of this case.
2. The Clerk shall issue a summons upon Defendants as to Plaintiffs Fourth Amended Complaint.
3. Defendants are thereafter ORDERED to reply to Plaintiff's Fourth Amended Complaint within the time provided by the applicable provisions of Federal Rule of Civil Procedure 12(a).

**IT IS SO ORDERED.**

DATED: March 7, 2011

  
 LOUISA S PORTER  
 United States Magistrate Judge

cc The Honorable Larry A. Burns  
 All parties